



**BILLING CODE: 8070-01-P**

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Parts 1200, 1201, 1229, 1238, 1239, 1261, 1264, 1266, 1267, 1269, 1270, 1273, 1274, 1278, 1281, 1282, 1290, and 1291**

**RIN 2590-AA80**

**Technical and Conforming Changes and Corrections to FHFA Regulations**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Final rule.

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**SUMMARY:** The Federal Housing Finance Agency (FHFA) is amending its rules to make a number of conforming changes and corrections intended to fix citations, provide for consistent use of terminology, and remove duplicative definitions. FHFA is also removing provisions that are no longer applicable, clarifying other provisions by incorporating language to implement existing FHFA regulatory interpretations, and making other changes and corrections.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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Device for the Hearing Impaired is 800-877-8339.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA)<sup>1</sup> created FHFA as a new independent agency of the federal government. HERA transferred to FHFA the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), and of the Federal Housing Finance Board (Finance Board) over the Federal Home Loan Banks (Banks) and the Bank System's Office of Finance. Under the legislation, the Enterprises, the Banks, and the Office of Finance continue to operate under regulations promulgated by OFHEO and the Finance Board until such regulations are superseded by regulations issued by FHFA.<sup>2</sup>

### **II. The Final Rule**

#### **A. The Proposed Amendments**

In May 2016, FHFA issued a Notice of Proposed Rulemaking (NPR) that would have amended its regulations to make a number of technical and conforming changes and corrections that corrected citations, provided for consistent use of terminology, and removed outdated or duplicative provisions and definitions.<sup>3</sup> While most of the changes represented technical corrections, some of the proposed changes removed provisions that FHFA believed were no longer applicable, clarified provisions to incorporate FHFA

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<sup>1</sup> Pub. Law No. 110-289, 122 Stat. 2654.

<sup>2</sup> See 12 U.S.C. 4511, note.

<sup>3</sup> See, Proposed Rule: Technical and Conforming Changes and Corrections to FHFA Regulations, 81 FR 33424 (May 26, 2016) (hereinafter "Proposed Rule").

regulatory interpretations of the particular rule, or changed provisions to better reflect statutory requirements. As a result, FHFA requested public comments on all of the proposed changes. The comment period for the NPR closed on July 25, 2016.

FHFA intended the NPR to address errors that had arisen in its regulations as it amended, readopted, and transferred a large number of the Finance Board or OFHEO regulations. Given that this process occurred over several years, not all cross-references in the FHFA current regulations are correct. In addition, in January 2013, FHFA adopted 12 CFR part 1201 (part 1201), which provides general definitions of terms used in all FHFA's regulations. Not all terminology in FHFA's regulations is consistent with the terms in part 1201. FHFA also identified certain provisions in its regulations that require corrections to bring them more in line with statutory mandates. Finally, a number of provisions in the regulations address now-completed transition periods or events or otherwise do not have future applicability to the Enterprises or the Banks.

#### B. Comments Received

FHFA received two comments on the NPR. One comment letter was a joint letter from all eleven Banks. The other came from a smaller group of Banks. One comment letter objected to the proposed removal of the provision on out-of-district advances from the regulations and to statements FHFA made in the preamble of the proposed rule about the need for Banks to assure that members capitalize any participated advances. It also identified additional errors in current regulations that FHFA had not included in the proposed rule and suggested a change to one of the definitions proposed by FHFA. The other letter did not comment specifically on any amendments proposed by FHFA but objected to some aspects of what FHFA described in the preamble as the current policy

for identifying which Bank directorships would be eliminated when a state is slated to lose a director's seat as a result of the annual designation of directorships.<sup>4</sup>

Proposal to Remove § 1266.25. One comment letter objected to FHFA's proposal to remove from its regulations § 1266.25, a provision that authorizes a Bank to become a creditor to a member of another Bank through the purchase of an outstanding advance (or a participation interest therein) from the other Bank, or "through an arrangement with the other Bank that provides for the establishment of such a creditor/debtor relationship at the time the advance is made." The commenters believed that removal of the provision, coupled with FHFA's statement in the preamble that non-members of a purchasing Bank would need to capitalize any participation interest in their advances that are sold to that Bank, will result in eliminating long-standing authority that allowed Banks to purchase such advances.<sup>5</sup> The commenters contended that when the Finance Board adopted the predecessor regulation to § 1266.25 in 2000, it did not mention requiring non-member capitalization of such out-of-district participation interests, but instead stated that the purpose of the rule was to assure that the Bank performed the same level of due diligence as that applied to in-district advances.

While the comment letter contended that the Finance Board did not require the capitalization of participation interests in advances when it originally adopted what is currently § 1266.25, the rule specifically states that any creditor/debtor relationships established under the rule "shall be subject to all the provisions of [the advances

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<sup>4</sup> See Proposed Rule, 81 FR at 33427-28.

<sup>5</sup> In the NPR, FHFA noted that:

Removal of this provision [§ 1266.25] would not prevent one Bank from selling an advance or participation to another Bank, based solely on the statutory authority, but FHFA would expect that before doing so a Bank would first obtain the concurrence of FHFA about how a non-member could capitalize those advances through some means other than buying stock. Proposed Rule, 81 FR at 33430.

regulation] that would apply to an advance made by a Bank to its own members or housing associates.”<sup>6</sup> One of the provisions in the Finance Board advances regulation, at the time current § 1266.25, was originally adopted in 2000, prohibited a Bank from making an advance to one of its members if the aggregate amount of the outstanding advances to that member would exceed 20 times the amount paid in by such member for the Bank’s capital stock.<sup>7</sup> Thus, as written, the out-of-district advances rule by its terms would appear to have required the capitalization of an out-of-district advance involving a member of another Bank, whether it was established through sale of a participation interest or through creation of a direct creditor/debtor relationship between a Bank and a member of another Bank.

In fact, part of FHFA’s reason for proposing to delete § 1266.25 is the ambiguity and difficulty in applying the broad requirement that any participation interest in an advance or direct creditor/debtor relationship with an out-of-district member meet all requirements of the advances regulation, as if that out-of-district member were a member of the Bank ultimately holding the advance.<sup>8</sup> Moreover, as FHFA also noted, the provision does not add meaningfully to the clear statutory authority that allows Banks to buy or sell advances or participation interests in advances to other Banks.<sup>9</sup> As written,

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<sup>6</sup> The commenter noted that current § 1266.25 is identical, except for some minor changes in word order, to the provision adopted at 12 CFR 950.18 in July 2000.

<sup>7</sup> See 12 CFR 935.15(a) (2000). Effective February 18, 2000, § 935.15 of the Finance Board regulations was re-designated without substantive change as § 950.15. See 65 FR 8253, 8254 (Feb. 18, 2000). This provision was again later re-designated without further amendment as § 950.11 in July 2000. See 65 FR. 44414, 44430 (July 18, 2000). This provision is currently found at 12 CFR 1266.11(a) but applied only to Banks that had not converted to the Gramm-Leach-Bliley capital structure. As a consequence, FHFA proposed to delete it in the NPR. See Proposed Rule, 81 FR at 33430.

<sup>8</sup> See id.

<sup>9</sup> 12 U.S.C. 1430 (d) provides in relevant part that: “Any Federal Home Loan Bank shall have power to sell to any other Federal Home Loan Bank, with or without recourse, any advance made under the provision of this chapter, or to allow such [B]ank a participation therein, and any other Federal Home Loan Bank shall have power to purchase such advance or accept a participation therein, together with an appropriate assignment of security therefor.”

§ 1266.25 requires that in order to purchase an advance or participation interest in an advance made by another Bank, the purchasing Bank would have to assure the transaction is structured to meet all the same requirements that apply to an advance that the purchasing Bank makes to its own members. This requirement appears to add complexity to these sales and to create uncertainties for these transactions. As a result, the comments received in response to the proposal to delete § 1266.25 do not alter FHFA's underlying reasons for proposing to remove the provision, and FHFA has determined to adopt the final rule as proposed.

The comment letter, however, correctly noted that prior to the adoption of the predecessor to § 1266.25, the Finance Board had not required non-member capitalization of participated advances. The comment letter, therefore, raised a fair point that FHFA's statements in the preamble about capitalization of participation interests were likely to create uncertainties about the Banks' ability to exercise their statutory authority to buy and sell participation interests in advances. Notwithstanding the language of the preamble to the NPR, FHFA did not intend to alter the long-standing agency policy that allows a Bank to purchase a participation interest in an advance made by another Bank without requiring the borrowing member to capitalize the participation interest acquired by the purchasing Bank. The final rule does nothing to change that policy, and thus the Banks may continue to purchase and sell participation interests in advances as they have done previously. The only substantive effect of removing § 1266.25 is to eliminate the language that addresses the establishment of debtor/creditor relationships other than those created through the sale of a participation interest in an advance. Because that provision does not describe the type of relationships encompassed by its language, it has created

some uncertainty as to its scope, which has prompted inquiries from the Banks about what types of transactions are permitted. FHFA has informally advised some Banks that the “arrangement with the other Bank” language of § 1266.25(a) does not authorize a Bank to originate an advance to a member of another Bank, nor does it authorize a Bank to issue standby letters of credit on behalf of a member of another Bank. By removing that language FHFA will eliminate such uncertainties and should not adversely affect any Bank because none has established any such debtor/creditor relationships with members of other Banks in reliance on that provision.

Proposed Changes to Part 1261. Another comment expressed concerns about FHFA statements in the Supplementary Information section of the NPR relating to how FHFA determines which member directorship to eliminate when, in the annual designation of directorships, FHFA allocates to a particular state fewer directorships for the coming year than it has in the current year. Specifically, commenters took issue with FHFA’s statement that if a state were going to lose a member directorship at the start of the next year and such state had a member directorship slated to expire at the end of the current year, then the Bank would eliminate the directorship – and the director – with the expiring term.<sup>10</sup> The commenters argued that this statement constituted a change in agency policy and as such should have been the subject of a substantive rulemaking. They also argued that in this situation, a Bank’s board of directors should be able to designate which directorship for the particular state would be eliminated, as is the case when FHFA reduces the number of directorships for a state which has no director with a term expiring that year. Without discretion to make such determinations, commenters

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<sup>10</sup> See Proposed Rule, 81 FR at 33427-28.

stated, Banks' boards of directors could suffer adverse consequences, including losing key members.

As an initial matter, these comments did not address any of the specific technical amendments that FHFA proposed to make to the part 1261 regulation. Indeed, FHFA did not propose to revise any regulations pertaining to the reduction of directorships caused by the annual designation process, and the preamble statements that appear to have prompted the comments were simply background information that FHFA provided as context to the FHFA's proposed revisions to other provisions of part 1261. As background information, the preamble statements did not purport to make any changes to agency policy regarding Bank directorships, but simply described the existing practice for one particular situation. Therefore, FHFA is not making any changes in the final rule as a result of these comments.

Moreover, FHFA disagrees with the comment letter's contention that a Bank's board of directors should be permitted in all cases to determine which particular directorship must be eliminated when the annual designation of directorships reduces the number of directorships allocated to a particular state. By statute, FHFA is required annually to establish the size of the board of directors for each Bank and to designate the number of member directorships to be allocated to each state within each Bank's district. Occasionally, FHFA's designation of directorships order reduces the number of directorships allocated to a particular state, which means that one of the incumbent directorships must be eliminated as of the end of that calendar year. If one of those directorships has a term that will expire as of the end of that calendar year, the reduction in board size required by FHFA's designation of directorships order is effectively self-



executing, i.e., the expiration of the term of office for one director automatically brings the board size into compliance with the size authorized by the designation order. To allow the Banks to do what the commenter has suggested, i.e., retain the director with the expiring term, would necessarily require that the Bank take some action to remove from its board a director whose term of office has not expired, so that the number of directorships for that state does not exceed the number authorized by FHFA. A Bank, however, has no legal authority to remove a sitting director from the Bank's board of directors, and thus could not require an incumbent director whose term is not expiring to leave the board. This situation differs from that in which FHFA reduces the number of directorships allocated to a particular state, which has no directorships expiring at the end of the year. In that case, the designation of directorships order is what terminates one of the member directorships, and effectively delegates to the Bank's board of directors the authority to determine which particular directorship has been terminated. In those circumstances, there is no legal issue relating to the removal of an incumbent director prior to the expiration of his or her term because, as of the effective date of the designation of directorships order, the directorship would have ceased to exist and there would be no office from which the person was being removed.

Proposed Definition of President. Commenters also suggested that FHFA alter the proposed definition of "president" to read "the individual who serves as the highest ranking executive officer of a Bank." The NPR proposed to define president, when used to describe an officer of a Bank, as "a Bank's principal executive officer."

The commenters did not provide a reason for the suggested change or why FHFA's proposed definition was problematic. FHFA notes that the Securities Exchange

Commission (SEC) uses the term “principal executive officer” in the context of its disclosure rules on compensation, which the Banks already apply.<sup>11</sup> FHFA also believes the reference to “principal executive officer” is clearer and more straightforward than trying to identify which Bank officer outranks another or to quantify the ranking among executive officers. Thus, FHFA is adopting the definition of “president” as proposed.

Additional Technical Corrections. Finally, commenters identified additional corrections to FHFA’s regulations that were not included as part of the NPR. FHFA agrees that commenters identified clear errors with FHFA’s current regulations and is therefore adopting the corrections suggested by commenters as part of the final rule.

First, commenters pointed out that cross references in 12 CFR 1266.17(c)(2) to § 1266.3(b) of FHFA’s rules appear to be incorrect, and the reference instead should be to § 1266.5(b). FHFA agrees and is adding to the final rule a provision to make this correction. The cross reference in § 1266.17(c)(2) is intended to incorporate standards that Banks must apply when making advances to members to any advance that a Bank makes to a housing associate. The current cite in the rule to § 1266.3(b), however, references requirements that apply to long-term advances made to members rather than the pricing criteria, which are set forth in § 1266.5(b). The Finance Board appears to have added the erroneous cross reference to the rule when it first adopted it in 2002, and FHFA carried over the mistake to part 1266 when it re-adopted the rule in 2010.<sup>12</sup>

Second, commenters identified two corrections to appendix A of part 1273

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<sup>11</sup> See 17 CFR 229.402.

<sup>12</sup> See Final Rule: Technical Amendments to Federal Housing Finance Board Regulations, 57 FR12841, 12851 (Mar. 20, 2002). See, also, Final Rule: Use of Community Development Loans by Community Financial Institutions to Secure Advances; Secured Lending by Federal Home Loan Banks to Members and Their Affiliates; Transfer of Advances and New Business Activity Regulation, 75 FR 76617, 76622 (Dec. 9, 2010).

(appendix A), which sets forth exceptions to the general SEC disclosure standards that the Office of Finance (OF) otherwise must follow in preparing the Bank System's Combined Financial Report. The first error is a reference to "Item 402(1) of SEC Regulation S-K" in paragraph C of appendix A. SEC Regulation S-K, however does not contain an "Item 402(1)." The Finance Board erroneously cited to "Item 402(1), 17 CFR 229.402(1)" when it first adopted appendix A in 2000.<sup>13</sup> FHFA, however, cannot determine what provision in Regulation S-K, the Finance Board intended to reference. Nor can FHFA identify any other SEC item that might be relevant to the matters addressed in paragraph C of appendix A. As a result, FHFA intends to delete the reference to "Item 402(1) of SEC Regulation S-K," as suggested by commenters.

Commenters also pointed out that a statement in paragraph D of appendix A is no longer accurate given recent regulatory changes. Specifically, paragraph D, which addresses matters submitted for shareholder vote, contains a statement that: "The only item shareholders vote upon is the annual election of directors." Under the voluntary merger rules adopted by FHFA after HERA, however, a Bank's shareholders also may vote to ratify a voluntary merger agreement between their Bank and another Bank.<sup>14</sup> Thus, given that the statement about member voting is no longer accurate and adds nothing substantive to the appendix item at issue, FHFA is deleting the sentence as suggested by commenters.

### C. The Final Rule

As just discussed, FHFA is adopting as part of the final rule a number of additional technical corrections suggested by commenters but is otherwise not changing

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<sup>13</sup> See Final Rule, Office of Finance; Authority of Federal Home Loan Banks to Issue Consolidated Obligations, 65 FR 36290, 36303 (June 7, 2000).

<sup>14</sup> See 12 CFR 1278.6.

the proposed rule based on the comments received. In addition, FHFA is updating the table in § 1200.4 providing the Office of Management and Budget (OMB) control numbers and expiration dates for FHFA information collections under the Paperwork Reduction Act to reflect recent OMB actions and approvals.

Further, after publication of the NPR, FHFA identified additional instances in which terms defined in part 1201 of its regulations, which provides general definitions applicable to all FHFA regulations, are also defined in other FHFA regulations. As a result, FHFA is adopting provisions as part of this final rule to remove duplicative definitions from part 1281 for the terms “Bank System” and “data reporting manual (DRM)” and from part 1282 for the term “HUD.”<sup>15</sup> FHFA is also adopting in the final rule a correction to a cross-reference in 12 CFR 1266.10 to the FHFA regulation addressing the Banks’ member product policies. The member products policy regulation was located at 12 CFR 917.4 but FHFA recently transferred it to 12 CFR 1239.30, although FHFA did not update the cross reference in 12 CFR 1266.10 at that time.<sup>16</sup>

Other than incorporating the additional corrections highlighted above, FHFA is adopting the changes proposed by the NPR as final without further substantive changes.

#### D. Considerations of Differences between the Banks and the Enterprises

When promulgating regulations relating to the Banks, section 1313(f) of the Safety and Soundness Act requires the Director to consider the differences between the Banks and the Enterprises with respect to the Banks’ cooperative ownership structure; mission of providing liquidity to members; affordable housing and community

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<sup>15</sup> 12 CFR parts 1281 and 1282.

<sup>16</sup> See Final Rule: Responsibilities of Boards of Directors, Corporate Practices and Corporate Governance Matters, 80 FR 72327 (Nov. 19, 2015).

development mission; capital structure; and joint and several liability.<sup>17</sup> The changes made in this rulemaking correct existing FHFA regulations or are clarifying and conforming in nature. Nonetheless, FHFA, in preparing this rule, considered the differences between the Banks and the Enterprises as they related to the above factors. FHFA requested public comments about whether these differences should result in any revisions to the proposed rule, but received no comments responsive to this request.

### **III. Paperwork Reduction Act**

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

### **IV. Regulatory Flexibility Act**

The final rule applies only to the Banks and the Enterprises, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, FHFA certifies that this final rule does not have significant economic impact on a substantial number of small entities.

#### **List of Subjects**

##### 12 CFR Part 1200

Organization and functions (Government agencies), Reporting and recordkeeping requirements, Seals and insignia.

##### 12 CFR Part 1201

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Office of finance, Regulated entities.

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<sup>17</sup> See 12 U.S.C. 4513.

12 CFR Part 1229

Capital, Federal home loan banks, Government-sponsored enterprises, Reporting and recordkeeping requirements.

12 CFR Part 1238

Administrative practice and procedure, Capital, Federal home loan banks, Government-sponsored enterprises, Reporting and recordkeeping requirements, Stress test.

12 CFR Part 1239

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Reporting and recordkeeping requirements.

12 CFR Part 1261

Banking, Banks, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

12 CFR Parts 1264, 1266, and 1267

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 1269

Community development, Credit, Federal home loan banks, Housing, Letters of credit.

12 CFR Part 1270

Accounting, Federal home loan banks, Government securities.

12 CFR Part 1273

Federal home loan banks, Securities.

12 CFR Part 1274

Accounting, Federal home loan banks, Financial disclosure.

12 CFR Part 1278

Banks, Banking, Federal home loan banks, Mergers.

12 CFR Parts 1281 and 1290

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 1291

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, for reasons stated in the **Supplementary Information** and under authority of 12 U.S.C. 4511, 4513, and 4526, FHFA is amending chapter XII of title 12 of the Code of Federal Regulations as follows:

**CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY**

**Subchapter A—Organization and Operations**

**PART 1200—ORGANIZATION AND FUNCTIONS**

1. The authority citation for part 1200 is revised to read as follows:

**Authority:** 5 U.S.C. 552, 12 U.S.C. 4512, 12 U.S.C. 4526, 44 U.S.C. 3506.

2. Add § 1200.4 to read as follows:

**§ 1200.4 OMB control numbers assigned under the Paperwork Reduction Act.**

(a) Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3531) and the

implementing regulations of the Office of Management and Budget (OMB) (5 CFR part 1320), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(b) OMB has approved the collections of information contained in FHFA's regulations and has assigned each collection a control number. The following table displays the sections of FHFA's regulations (both those located in this chapter and those promulgated by the former Federal Housing Finance Board that appear in chapter IX of this title) containing collections of information, along with the applicable OMB control numbers and the expirations dates for those control numbers:

<b>12 CFR part or section where identified and described</b>	<b>OMB control no.</b>	<b>Expiration date</b>
906.5 .....	2590-0004	07/31/2017
955.4 .....	2590-0008	02/29/2016
1207.23 .....	2590-0014	07/31/2018
1222.22 .....	2590-0013	07/31/2018
1222.23.....	2590-0013	07/31/2018
1222.24.....	2590-0013	07/31/2018
1222.25.....	2590-0013	07/31/2018
1222.26.....	2590-0013	07/31/2018
1261.7 .....	2590-0006	12/31/2017
1261.12.....	2590-0006	12/31/2017
1261.14.....	2590-0006	12/31/2017
1263.2 .....	2590-0003	12/31/2016
1263.4.....	2590-0003	12/31/2016
1263.5.....	2590-0003	12/31/2016
1263.6.....	2590-0003	12/31/2016
1263.7.....	2590-0003	12/31/2016
1263.8.....	2590-0003	12/31/2016
1263.9 .....	2590-0003	12/31/2016
1263.11.....	2590-0003	12/31/2016
1263.12.....	2590-0003	12/31/2016
1263.13.....	2590-0003	12/31/2016
1263.14.....	2590-0003	12/31/2016
1263.15.....	2590-0003	12/31/2016
1263.16.....	2590-0003	12/31/2016
1263.17.....	2590-0003	12/31/2016



1263.18.....	2590-0003	12/31/2016
1263.24.....	2590-0003	12/31/2016
1263.26.....	2590-0003	12/31/2016
1263.31.....	2590-0003	12/31/2016
1264.4.....	2590-0001	12/31/2018
1264.5.....	2590-0001	12/31/2018
1264.6.....	2590-0001	12/31/2018
1266.17.....	2590-0001	12/31/2018
1277.28.....	2590-0002	12/31/2016
1290.2.....	2590-0005	02/29/2016
1290.3.....	2590-0005	02/29/2016
1290.4.....	2590-0005	02/29/2016
1290.5.....	2590-0005	02/29/2016
1291.5.....	2590-0007	11/30/2016
1291.6.....	2590-0007	11/30/2016
1291.7.....	2590-0007	11/30/2016
1291.8.....	2590-0007	11/30/2016
1291.9.....	2590-0007	11/30/2016

**PART 1201—GENERAL DEFINITIONS APPLYING TO ALL FEDERAL  
HOUSING FINANCE AGENCY REGULATIONS**

3. The authority citation for part 1201 continues to read as follows:

**Authority:** 12 U.S.C. 4511(b), 4513(a), 4513(b).

4. Amend § 1201.1 by revising the definition of “Bank System” and adding, in alphabetical order, a definition for “President” to read as follows:

**§ 1201.1 Definitions.**

\* \* \* \* \*

Bank System means the Federal Home Loan Bank System, consisting of all of the Banks and the Office of Finance.

\* \* \* \* \*

President, when referring to an officer of a Bank only, means a Bank’s principal executive officer.

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## **Subchapter B—Entity Regulations**

### **PART 1229—CAPITAL CLASSIFICATIONS AND PROMPT CORRECTIVE ACTION**

5. The authority citation for part 1229 continues to read as follows:

**Authority:** 12 U.S.C. 1426, 4513, 4526, 4613, 4614, 4615, 4616, 4617, 4618, 4622, 4623.

6. Amend § 1229.1 by revising the definitions of “new business activity” and “total capital” to read as follows:

#### **§ 1229.1 Definitions.**

\* \* \* \* \*

New business activity when used in this subpart has the same meaning set forth in § 1272.1 of this chapter.

\* \* \* \* \*

Total capital means the sum of the Bank’s permanent capital, the amount paid-in for its Class A stock, the amount of any general allowances for losses, and the amount of any other instruments identified in a Bank’s capital plan that the Director has determined to be available to absorb losses incurred by such Bank.

7. Amend § 1229.6 by revising paragraph (a)(3) to read as follows:

#### **§ 1229.6 Mandatory actions applicable to undercapitalized Banks.**

(a) \* \* \*

(3) Not make any capital distribution unless:

(i) The distribution meets the requirements of § 1229.5(b) and paragraphs

(a)(3)(ii) and (iii) of this section and the Director has provided permission for such distribution as set forth in § 1229.5(b);

(ii) The capital distribution will not result in the Bank being reclassified as significantly undercapitalized or critically undercapitalized; and

(iii) The capital distribution does not violate any restriction on the redemption or repurchase of capital stock or the declaration or payment of a dividend set forth in section 6 of the Bank Act (12 U.S.C. 1426) or in any other applicable regulation;

\* \* \* \* \*

#### **§ 1229.7 [Amended]**

8. Amend § 1229.7(a) by removing the reference to “§ 1229.7 or § 1229.8 of this subpart” and adding in its place a reference to “§ 1229.8 or § 1229.9”.

### **PART 1238—STRESS TESTING OF REGULATED ENTITIES**

9. The authority citation for part 1238 continues to read as follows:

**Authority:** 12 U.S.C. 1426; 4513; 4526; 4612; 5365(i).

#### **§ 1238.1 [Amended]**

10. Amend § 1238.1(a) by:

a. Removing the reference to “Federal Housing Finance Agency (FHFA)” and adding in its place “FHFA”;

b. Removing the reference to “Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended” and adding in its place “Safety and Soundness Act”; and

c. Removing the reference to “Federal Home Loan Bank Act, as amended” and adding in its place “Bank Act”.

**§ 1238.2 [Amended]**

11. Amend § 1238.2 by removing the definitions for “Federal Home Loan Banks,” “Federal Housing Finance Agency or FHFA,” and “regulated entities”.

**PART 1239—RESPONSIBILITIES OF BOARDS OF DIRECTORS, CORPORATE PRACTICES, AND CORPORATE GOVERNANCE**

12. The authority citation for part 1239 is revised to read as follows:

**Authority:** 12 U.S.C. 1426, 1427, 1432(a), 1436(a), 1440, 4511(b), 4513(a), 4513(b), 4526, and 15 U.S.C. 78oo(b).

13. Amend § 1239.32 by:

- a. Revising paragraphs (d)(3) and (e)(4);
- b. Removing the word “and” at the end of paragraph (e)(8);
- c. Removing the period at the end of paragraph (e)(9) and adding “; and” in its place; and
- d. Adding paragraph (e)(10).

The revisions and addition read as follows:

**§ 1239.32 Audit committee.**

\* \* \* \* \*

(d)\* \* \*

(3) Each Bank's audit committee charter shall:

- (i) Provide that the audit committee has the responsibility to select, evaluate and, where appropriate, replace the internal auditor and that the internal auditor may be removed only with the approval of the audit committee;
- (ii) Provide that the internal auditor shall report directly to the audit committee on

substantive matters and that the internal auditor is ultimately accountable to the audit committee and board of directors;

(iii) Provide that the audit committee shall be directly responsible for the appointment, compensation, retention, and oversight of the work of the external auditor;

(iv) Provide that the external auditor shall report directly to the audit committee;

(v) Provide that both the internal auditor and the external auditor shall have unrestricted access to the audit committee without the need for any prior management knowledge or approval; and

(vi) Provide that the Bank shall make available appropriate funding, as determined by the audit committee, for payment of compensation to the external auditor, to any independent advisors or counsel engaged by the audit committee, and ordinary administrative expenses that are necessary or appropriate for the audit committee to carry out its duties.

(e) \* \* \*

(4) Oversee the external audit function by:

(i) Approving the external auditor's annual engagement letter; and

(ii) Reviewing the performance of the external auditor.

\* \* \* \* \*

(10) Establish procedures for the receipt, retention, and treatment of complaints received by the Bank regarding accounting, internal accounting controls, or auditing matters, and for the confidential, anonymous submission by employees of the Bank of concerns regarding questionable accounting or auditing matters.

\* \* \* \* \*

## **Subchapter D—Federal Home Loan Banks**

### **PART 1261—FEDERAL HOME LOAN BANK DIRECTORS**

14. The authority citation for part 1261 continues to read as follows:

**Authority:** 12 U.S.C. 1426, 1427, 1432, 4511 and 4526.

#### **§ 1261.2 [Amended]**

15. Amend § 1261.2:

- a. By adding, in alphabetical order, a definition for “Advisory Council”;
- b. In the definition of “Member directorship”, by removing the words “, and includes guaranteed directorships and stock directorships”;
- c. In the definition of “Public interest directorship”, by removing the words “four years experience” and, in their place, adding the words “four years of experience”; and
- d. By removing the definition of “Stock directorship”.

The revision reads as follows:

#### **§ 1261.2 Definitions.**

\* \* \* \* \*

Advisory Council means the Advisory Council each Bank is required to establish pursuant to section 10(j)(11) of the Bank Act (12 U.S.C. 1430(j)(11)), and part 1291 of this chapter.

\* \* \* \* \*

#### **§ 1261.3 [Amended]**

16. Amend § 1261.3:

- a. In paragraph (b), by removing the words “commencing on or after January 1, 2009”; and

b. In paragraph (e), by removing the word “part”, wherever it appears, and, in its place, adding the word “subpart”.

17. Amend § 1261.4 by revising paragraphs (a) and (b) to read as follows:

**§ 1261.4 Designation of member directorships.**

(a) Capital stock reports. (1) On or before April 10 of each year, each Bank shall deliver to FHFA a capital stock report that indicates, as of the record date, the number of members located in each voting State in the Bank's district, the number of shares of Bank stock that each member (identified by its FHFA ID number) was required to hold, and the number of shares of Bank stock that all members located in each voting State were required to hold. If a Bank has issued more than one class of stock, it shall report the total shares of stock of all classes required to be held by the members. The Bank shall certify to FHFA that, to the best of its knowledge, the information provided in the capital stock report is accurate and complete, and that it has notified each member of its minimum capital stock holding requirement as of the record date.

(2) The number of shares of Bank stock that any member was required to hold as of the record date shall be determined in accordance with the minimum investment established by the capital plan for that Bank.

(b) Designation of member directorships. Using the method of equal proportions, the Director annually will conduct a designation of member directorships for each Bank based on the number of shares of Bank stock required to be held by the members in each State as of the record date. If a Bank has issued more than one class of stock, the Director will designate the directorships for each State in that Bank district based on the combined number of shares required to be held by the members in that State. For

purposes of conducting the designation, the number of shares of Bank stock required to be held by members as of that date shall be determined in accordance with the minimum investment established by the capital plan for that Bank. In all cases, the Director will designate the directorships by using the information provided by each Bank in its capital stock report required by paragraph (a)(1) of this section.

\* \* \* \* \*

**§ 1261.5 [Amended]**

18. Amend § 1261.5:

a. In paragraph (b), by removing the extra period following the words “under § 1261.4(c).”; and

b. By removing paragraph (e)(2).

19. Amend § 1261.6 by revising paragraph (b) to read as follows:

**§ 1261.6 Determination of member votes.**

\* \* \* \* \*

(b) Number of votes. For each member directorship and each independent directorship that is to be filled in an election, each member shall be entitled to cast one vote for each share of Bank stock that the member was required to hold as of the record date. Notwithstanding the preceding sentence, the number of votes that any member may cast for any one directorship shall not exceed the average number of shares of Bank stock required to be held as of the record date by all members located in the same State as of the record date. If a Bank has issued more than one class of stock, it shall calculate the average number of shares separately for each class of stock, using the total number of members in a State as the denominator, and shall apply those limits separately in



determining the maximum number of votes that any member owning that class of stock may cast in the election. The number of shares of Bank stock that a member was required to hold as of the record date shall be determined in accordance with the minimum investment requirement established by the Bank's capital plan.

\* \* \* \* \*

**§ 1261.7 [Amended]**

20. Amend § 1261.7:

a. In paragraph (a), by redesignating the first paragraph (a)(1) as the introductory text to paragraph (a);

b. In paragraph (d)(1)(i), by removing the words "four years experience" and, in their place, adding the words "four years of experience"; and

c. In paragraph (e)(2), by removing the words "four years experience" and, in their place, adding the words "four years of experience".

21. Amend § 1261.8 by revising paragraphs (a) and (c) to read as follows:

**§ 1261.8 Election process.**

(a) Ballots. Promptly after fulfilling the requirements of § 1261.7(f), each Bank shall prepare and deliver a ballot to each member that was a member as of the record date. The Bank shall include with each ballot a closing date for the Bank's receipt of voted ballots, which date shall be no earlier than 30 calendar days after the date such ballot is delivered to the member.

(1) A ballot shall include at least the following provisions:

(i) For states in which one or more member directorships are to be filled in the election, an alphabetical listing of the names of each nominee for such directorship, the

name, location, and FHFA ID number of the member each nominee serves, the nominee's title or position with the member, and the number of member directorships to be filled by the members in that voting state in the election;

(ii) An alphabetical listing of the names of each nominee for a public interest independent directorship and a brief description of each nominee's experience representing consumer and community interests;

(iii) An alphabetical listing of the names of each nominee for the other independent directorships and a brief description of each nominee's qualifications, including his or her knowledge or experience in the areas of financial management, auditing and accounting, risk management practices, derivatives, project development, organizational management, and any other area of knowledge or experience set forth in § 1261.7(e);

(iv) A statement that write-in candidates are not permitted; and

(v) A confidentiality statement prohibiting the Bank from disclosing how any member voted.

(2) At the election of the Bank, a ballot also may include, in the body or as an attachment, a brief description of the skills and experience of each nominee for a member directorship.

\* \* \* \* \*

(c) Lack of member directorship nominees. If, for any voting State, the number of nominees for the member directorships for that State is equal to or fewer than the number of such directorships to be filled in that year's election, the Bank shall deliver a notice to the members in the affected voting State (in lieu of including any member directorship

nominees on the ballot for that State) that such nominees shall be deemed elected without further action, due to an insufficient number of nominees to warrant balloting.

Thereafter, the Bank shall declare elected all such eligible nominees. The nominees declared elected shall be included as directors-elect in the report of election required under paragraph (g) of this section. Any member directorship that is not filled due to a lack of nominees shall be deemed vacant as of January 1 of the following year and shall be filled by the Bank's board of directors in accordance with § 1261.14(a).

\* \* \* \* \*

22. Amend § 1261.9 by revising paragraphs (a) and (c) to read as follows:

**§ 1261.9 Actions affecting director elections.**

(a) Banks. Each Bank, acting through its board of directors, may conduct an annual assessment of the skills and experience possessed by the members of its board of directors as a whole and may determine whether the capabilities of the board would be enhanced through the addition of individuals with particular skills and experience. If the board of directors determines that the Bank could benefit by the addition to the board of directors of individuals with particular qualifications, such as auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, or the law, it may identify those qualifications and so inform the members as part of its announcement of elections pursuant to § 1261.7(a).

\*\*\*\*\*

(c) Prohibition. Except as provided in paragraphs (a) and (b) of this section, or § 1207.21(b)(5) of this chapter, no director, officer, attorney, employee, or agent of a Bank shall:

(1) Communicate in any manner that a director, officer, attorney, employee, or agent of a Bank, directly or indirectly, supports or opposes the nomination or election of a particular individual for a directorship; or

(2) Take any other action to influence the voting with respect to any particular individual.

**§ 1261.13 [Amended]**

23. Amend § 1261.13 by removing the words “this part” in the first sentence, and, in their place, adding the words “this subpart”.

24. Revise § 1261.15 to read as follows:

**§ 1261.15 Minimum number of member directorships.**

Except with respect to member directorships of a Bank resulting from the merger of any two or more Banks, the number of member directorships allocated to each state shall not be less than the number of directorships allocated to that state on December 31, 1960. The following table sets forth the states within Bank districts not created from the merger of two or more Banks whose members held more than one directorship on December 31, 1960:

<b>State</b>	<b>Number of elective directorships on December 31, 1960</b>
California.....	3
Colorado.....	2
Illinois.....	4
Indiana.....	5
Kansas.....	3
Kentucky.....	2
Louisiana.....	2
Massachusetts.....	3
Michigan.....	3

New Jersey.....	4
New York.....	4
Ohio.....	4
Oklahoma.....	2
Pennsylvania.....	6
Tennessee.....	2
Texas.....	3
Wisconsin.....	4

## **PART 1264—FEDERAL HOME LOAN BANK HOUSING ASSOCIATES**

25. The authority citation for part 1264 continues to read as follows:

**Authority:** 12 U.S.C. 1430b, 4511, 4513 and 4526.

### **§ 1264.2 [Amended]**

26. Amend § 1264.2 by removing the reference “part 950 of this title” and adding in its place the reference “part 1266 of this chapter”.

## **PART 1266—ADVANCES**

27. The authority citation for part 1266 continues to read as follows:

**Authority:** 12 U.S.C. 1426, 1429, 1430, 1430b, 1431, 4511(b), 4513, 4526(a).

### **Subpart A—Advances to Members**

28. Amend § 1266.1 by revising the definition of “Tangible capital” to read as follows:

#### **§ 1266.1 Definitions.**

\* \* \* \* \*

Tangible capital means:

(1) Capital, calculated according to GAAP, less “intangible assets” except for purchased mortgage servicing rights to the extent such assets are included in a member’s core or Tier 1 capital, as reported in a member’s Report of Condition and Income for

members whose primary federal regulator is the FDIC, the OCC, or the FRB.

(2) Capital calculated according to GAAP, less intangible assets, as defined by a Bank for members that are not regulated by the FDIC, the OCC, or the FRB; provided that a Bank shall include a member's purchased mortgage servicing rights to the extent such assets are included for the purpose of meeting regulatory capital requirements. In addition, for those members that are insurance companies and that do not file or otherwise prepare financial statements based on GAAP, Banks may base this calculation on the member's financial statements prepared using Statutory Accounting Principles as implemented by the insurance company member's appropriate state regulator.

\* \* \* \* \*

#### **§ 1266.10 [Amended]**

29. Amend § 1266.10(a) by removing the reference to “§ 917.4 of this title” and adding in its place a reference to “§ 1239.30 of this chapter”.

#### **§ 1266.11 [Removed and Reserved]**

30. Remove and reserve § 1266.11.

31. Amend § 1266.13 by revising paragraph (a) to read as follows:

#### **§ 1266.13 Special advances to savings associations.**

(a) Eligible institutions. (1) A Bank, upon receipt of a written request from the OCC, with respect to a federal savings association, or from the FDIC, with respect to a state chartered savings association, may make short-term advances to a savings association member pursuant to section 10(h) of the Bank Act (12 U.S.C. 1430(h)).

(2) Such request must certify that the savings association member:

(i) Is solvent but presents a supervisory concern to the OCC or FDIC, as

appropriate, because of the member's financial condition; and

(ii) Has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

\* \* \* \* \*

## **Subpart B—Advances to Housing Associates**

### **§ 1266.17 [Amended]**

32. Amend § 1266.17(c)(2)(i) by removing the reference to “§ 1266.3(b)” each time it appears and adding in its place a reference to “§ 1266.5(b)”.

## **Subpart C [Removed]**

33. Remove subpart C to part 1266, consisting of § 1266.25.

## **PART 1267—FEDERAL HOME LOAN BANK INVESTMENTS**

34. The authority citation for part 1267 continues to read as follows:

**Authority:** 12 U.S.C. 1429, 1430, 1430b, 1431, 1436, 4511, 4513, 4526.

### **§ 1267.1 [Amended]**

35. Amend § 1267.1 by removing the definitions for “consolidated obligation” and “GAAP”.

## **PART 1269—STANDBY LETTERS OF CREDIT**

36. The authority citation for part 1269 continues to read as follows:

**Authority:** 12 U.S.C. 1429, 1430, 1430b, 1431, 4511, 4513 and 4526.

### **§ 1269.4 [Amended]**

37. Amend § 1269.4(a)(1) by removing the reference to “969.2 of this title” and adding in its place a reference to “1270.3 of this chapter”.

## **PART 1270—LIABILITIES**

38. The authority citation for part 1270 continues to read as follows:

**Authority:** 12 U.S.C. 1431, 1432, 1435, 4511, 4512, 4513, and 4526.

**§ 1270.9 [Amended]**

39. Amend § 1270.9(d)(1) by removing the reference to “§ 956.6 of this title” and adding in its place a reference to “§ 1267.4 of this chapter”.

**PART 1273—OFFICE OF FINANCE**

40. The authority citation for part 1273 continues to read as follows:

**Authority:** 12 U.S.C. 1431, 1440, 4511(b), 4513, 4514(a), 4526(a).

**§ 1273.1 [Amended]**

41. Amend § 1273.1 by removing the definitions for “Bank System,” “Consolidated obligations,” “Financing Corporation or FICO,” “Generally accepted accounting principles or GAAP,” “NRSRO,” “Office of Finance or OF,” and “Resolution Funding Corporation or REFCORP”.

42. Amend § 1273.3 by revising paragraphs (a) and (d) to read as follows:

**§ 1273.3 Functions of the OF.**

(a) Joint debt issuance. Subject to part 1270, subparts B and C, of this chapter, and this part, the OF, as agent for the Banks, shall offer, issue, and service (including making timely payments on principal and interest due) consolidated obligations.

\* \* \* \* \*

(d) Financing Corporation and Resolution Funding Corporation. The OF shall perform such duties and responsibilities for FICO as may be required under part 1271, subpart D, of this chapter, or for REFCORP as may be required under part 1271, subpart E, of this chapter or authorized by FHFA pursuant to section 21B (c)(6)(B) of the Bank



Act (12 U.S.C 1441b(c)(6)(B)).

**§ 1273.6 [Amended]**

43. Amend § 1273.6(a) by removing the reference to “§§ 966.8 and 966.9 of this title” and adding in its place a reference to “§§ 1270.9 and 1270.10 of this chapter”.

44. Revise § 1273.7 to read as follows:

**§ 1273.7 Structure of the OF board of directors.**

(a) Membership. The OF board of directors shall consist of part-time members as follows:

(1) Each of the Bank presidents, ex officio, provided that if the presidency of any Bank becomes vacant, the person designated by the Bank’s board of directors to temporarily fulfill the duties of president of that Bank shall serve on the OF board of directors until the presidency is filled permanently; and

(2) Five Independent Directors who—

(i) Each shall be a citizen of the United States;

(ii) As a group, shall have substantial experience in financial and accounting matters; and

(iii) Shall not have any material relationship with a Bank, or the OF (directly or as a partner, shareholder, or officer of an organization), as determined under criteria set forth in a policy adopted by the OF board of directors. At a minimum, such policy shall provide that an Independent Director may not:

(A) Be an officer, director, or employee of any Bank or member of a Bank, or have been an officer, director, or employee of a Bank or member of a Bank during the previous three years;

(B) Be an officer or employee of the OF, or have been an officer or employee of the OF during the previous three years; or

(C) Be affiliated with any consolidated obligations selling or dealer group under contract with OF, or hold shares or any other financial interest in any entity that is part of a consolidated obligations seller or dealer group in an amount greater than the lesser of \$250,000 or 0.01% of the market capitalization of the seller or dealer group, or in an amount that exceeds \$1,000,000 for all entities that are part of any consolidated obligations seller dealer group, combined. For purposes of this paragraph (a)(2)(iii)(C), a holding company of an entity that is part of a consolidated obligations seller or dealer group shall be deemed to be part of the consolidated obligations selling or dealer group if the assets of the holding company's subsidiaries that are part of a consolidated obligation seller or dealer group constitute 35% or more of the consolidated assets of the holding company.

(b) Terms. (1) Except as provided in paragraph (b)(2) of this section, each Independent Director shall serve for five-year terms (which shall be staggered so that no more than one Independent Director seat would be scheduled to become vacant in any one year), and shall be subject to removal or suspension in accordance with § 1273.4(a). An Independent Director may not serve more than two full, consecutive terms, provided that any partial term served by an Independent Director pursuant to paragraph (b)(2) of this section shall not count as a term for purposes of this restriction.

(2) The OF board of directors shall fill any vacancy among the Independent Directors occurring prior to the scheduled end of a term by majority vote, subject to FHFA's review of, and non-objection to, the new Independent Director. The OF board of

directors shall provide FHFA with the same biographic and background information about the new Independent Director required under paragraph (c) of this section, and FHFA shall have the same rights of non-objection to the Independent Director (and to appoint a different Independent Director) as set forth in paragraph (c) of this section. A person shall be elected (or otherwise appointed by FHFA) under this paragraph (b)(2) to serve only for the remainder of the term associated with the vacant directorship.

(c) Election of Independent Directors. The Independent Directors shall be elected by majority vote of the OF board of directors, subject to FHFA's review of, and non-objection to, each Independent Director. The OF board of directors shall provide FHFA with relevant biographic and background information, including information demonstrating that the new Independent Director meets the requirements of paragraph (a)(2) of this section, at least 20 business days before the person assumes any duties as a member of the OF board of directors. If the OF board of directors, in FHFA's judgment, fails to elect a suitably qualified person, FHFA may appoint some other person who meets the requirements of paragraph (a)(2) of this section. FHFA will provide notice of its objection to a particular Independent Director prior to the date that such Director is to assume duties as a member of the OF board of directors. Such notice shall indicate whether, given FHFA's objection, FHFA intends to fill the seat through appointment or a new election should be held by the OF board of directors.

(d) Election of Chair and Vice-Chair. (1) The Chair shall be elected by majority vote of the OF board of directors from among the Independent Directors then serving on the OF board of directors, and the Vice Chair shall be elected by majority vote of the OF board of directors from among all directors.

(2) The OF board of directors shall promptly inform FHFA of the election of a Chair or Vice Chair. If FHFA objects to any Chair or Vice Chair elected by the OF board of directors, FHFA shall provide written notice of its objection within 20 business days of the date that FHFA first receives the notice of the election of the Chair and or Vice Chair, and the OF board of directors must then promptly elect a new Chair or Vice Chair, as appropriate.

(e) By-laws and Committees. (1) The OF board of directors shall adopt by-laws governing the manner in which the board conducts its affairs, which shall be consistent with the requirements of this part and other applicable laws and regulations as administered by FHFA. The by-laws of the board of directors shall be subject to review and approval by FHFA.

(2) In addition to the Audit Committee required under § 1273.9, the OF board of directors may establish other committees, including an Executive Committee. The duties and powers of such committee, including any powers delegated by the OF board of directors, shall be specified in the by-laws of the board of directors or the charter of the committee.

(f) Compensation. (1) The Bank presidents shall not receive any additional compensation or reimbursement as a result of their service as a director of the OF board.

(2) The OF shall pay reasonable compensation and expenses to the Independent Directors in accordance with the requirements for payment of compensation and expenses to Bank directors as set forth in part 1261 of this chapter.

(g) Corporate Governance and Indemnification--(1) General. The corporate governance practices and procedures of the OF, and practices and procedures related to

indemnification (including advancement of expenses) shall comply with applicable Federal law, rules, and regulations.

(2) Election and designation of body of law. (i) To the extent not inconsistent with paragraph (g)(1) of this section, the OF shall elect to follow the corporate governance and indemnification practices and procedures set forth in one of the following:

- (A) The law of the jurisdiction in which the principal office of the OF is located;
- (B) The Delaware General Corporation Law (Del. Code Ann. Title 8); or
- (C) The Revised Model Business Corporation Act.

(ii) The OF board of directors shall designate in its by-laws the body of law elected pursuant to this paragraph (g)(2).

(3) Indemnification. Subject to paragraphs (g)(1) and (2) of this section, to the extent applicable, the OF shall indemnify (and advance the expenses of) its directors, officers, and employees under such terms and conditions as are determined by the OF board of directors. The OF shall be authorized to maintain insurance for its directors, the CEO, and any other officer or employee of the OF. Nothing in this paragraph (g)(3) shall affect any rights to indemnification (including the advancement of expenses) that a director, the CEO, or any other officer or employee of the OF had with respect to any actions, omissions, transactions, or facts occurring prior to [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(h) Delegation. In addition to any delegation to a committee allowed under paragraph (e) of this section, the OF board of directors may delegate any of its authority or duties to any employee of the OF in order to enable OF to carry out its functions.

(i) Outside staff and consultants. In carrying out its duties and responsibilities, the

OF board of directors, or any committee thereof, shall have authority to retain staff and outside counsel, independent accountants, or other outside consultants at the expense of the OF.

**§ 1273.8 [Amended]**

45. Amend § 1273.8 by:

- a. Removing from paragraph (d)(2) the reference to “§ 917.5 of this title” and adding in its place a reference to “§ 1239.31 of this chapter”;
- b. Removing paragraph (d)(3); and
- c. Redesignating paragraphs (d)(4), (5), and (6) as paragraphs (d)(3), (4), and (5), respectively.

46. Amend § 1273.9 by revising paragraph (b)(5) to read as follows:

**§ 1273.9 Audit Committee.**

\*\*\*\*\*

(b) \*\*\*

(5) The Audit Committee shall oversee internal audit activities, including the selection, evaluation, compensation, and, where appropriate, replacement of the internal auditor. The internal auditor shall report directly to the Audit Committee on substantive matters, and is ultimately accountable to the Audit Committee and the board of directors.

\*\*\*\*\*

**§ 1273.10 [Removed]**

47. Remove § 1273.10.

48. Amend appendix A to part 1273 by revising paragraphs C and D to read as follows:

## **Appendix A to Part 1273—Exceptions to the General Disclosure Standards**

\* \* \* \* \*

C. Compensation. The information on compensation required by Item 402 of Regulation S-K, 17 CFR 229.402, will be provided only for Bank presidents and the CEO of the OF.

D. Submission of matters to a vote of stockholders. No information will be presented on matters submitted to shareholders for a vote, as otherwise required by Item 4 of the SEC's form 10-K, 17 CFR 249.310.

\* \* \* \* \*

## **PART 1274—FINANCIAL STATEMENT OF THE BANKS**

49. The authority citation for part 1274 continues to read as follows:

**Authority:** 12 U.S.C. 1426, 1431, 4511(b), 4513, 4526(a).

### **§ 1274.1 [Amended]**

50. Amend § 1274.1 by removing the definitions for “Bank System” and “Financing Corporation or FICO”.

## **PART 1278—VOLUNTARY MERGERS OF FEDERAL HOME LOAN BANKS**

51. The authority citation for part 1278 continues to read as follows:

**Authority:** 12 U.S.C. 1432(a), 1446, 4511.

### **§ 1278.1 [Amended]**

52. Amend § 1278.1 by removing the definition for “GAAP”.

## **Subchapter E—Housing Goals and Mission**

## **PART 1281—FEDERAL HOME LOAN BANK HOUSING GOALS**

53. The authority citation for part 1281 continues to read as follows:

**Authority:** 12 U.S.C. 1430c.

## **Subpart A – General**

### **§ 1281.1 [Amended]**

54. Amend § 1281.1 by removing the definitions for “Bank System”, “Data Reporting Manual (DRM)”, and “Member”.

## **PART 1282—ENTERPIRSE HOUSING GOALS AND MISSION**

55. The authority citation for part 1282 continues to read as follows:

**Authority:** 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561-4566.

## **Subpart A – General**

### **§ 1282.1 [Amended]**

56. Amend § 1282.1 by removing the definition for the term “HUD”.

## **PART 1290—COMMUNITY SUPPORT REQUIREMENTS**

57. The authority citation for part 1290 continues to read as follows:

**Authority:** 12 U.S.C. 1430(g), 4511, 4513.

58. Amend § 1290.1 by revising the definition of “Advisory Council” to read as follows:

### **§ 1290.1 Definitions.**

\* \* \* \* \*

Advisory Council means the Advisory Council each Bank is required to establish pursuant to section 10(j)(11) of the Bank Act (12 U.S.C. 1430(j)(11)) and part 1291 of this chapter.

\* \* \* \* \*

## **PART 1291—FEDERAL HOME LOAN BANKS’ AFFORDABLE HOUSING PROGRAM**



59. The authority citation for part 1291 continues to read as follows:

**Authority:** 12 U.S.C. 1430(j).

**§ 1291.4 [Amended]**

60. Amend § 1291.4(f) by removing the reference to “the Act” and adding a reference to “the Bank Act” in its place.

Dated: October 21, 2016.

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Melvin L. Watt,

Director, Federal Housing Finance Agency.

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